

MINUTES

JOINT COMMITTEE ON STATE-TRIBAL RELATIONS

December 1, 2003
City Hall, Holton, Kansas

Members Present

Senator Lana Oleen, Chair
Representative Bill Mason, Vice Chair
Senator David Haley
Representative Becky Hutchins
Representative Tom Sawyer
Julene Miller, Attorney General's Representative
Matt All, Governor's Representative

Staff Present

Russell Mills, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Theresa Kiernan, Office of the Revisor of Statutes
Mary Torrence, Office of the Revisor of Statutes
Judy Swanson, Committee Secretary

Conferees

Galen Hubbard, Bureau of Indian Affairs
Russell Bradley, Kickapoo Tribal Treasurer
Emily Conklin, Kickapoo Tribal Vice Chairperson
Gail DePuis, Kansas Office of Native American Affairs
Steve Alexander, Kansas Attorney General's Office
Don Pilcher, Sac and Fox Nation
Brad Hamilton, Jackson County Commissioner
Kristi Fischer, Jackson County Deputy County Clerk
Lois Pelton, Jackson County Commissioner
Bruce Tomlinson, Jackson County Sheriff
David Prager, Counsel for Prairie Band Potawatomi Nation
John Graw, Jackson County Commissioner
Sam Grant, Prairie Band Potawatomi Tribal Police
Lamar Shoemaker, Brown County Sheriff
Ben Ehrhart, Mayetta

The Joint Committee on State-Tribal Relations was called to order by the Committee Chair, Senator Lana Oleen, on Monday, December 1, 2003, in the City Hall meeting room, Holton, Kansas, at 9:45 a.m. Chair Oleen thanked Representative Hutchins for making arrangements for the Committee to meet in Holton. Representative Hutchins welcomed the Committee, and advised the members that the Holton High School football team had won their first ever State 4A Championship football game.

Galen Hubbard, Superintendent of Bureau of Indian Affairs (BIA) in Horton, presented an overview of the fee to trust procedures (Attachment 1). He said that there are several different types of trust acquisitions:

- Discretionary requests for trust status;
- Mandatory requests for trust status; and
- Requests for gaming purposes.

Trust land or land in trust means land the title to which is held in trust by the United States for an individual Indian or a tribe. Land not held in trust or on restricted status only may be acquired by an individual Indian or tribe in trust status when such acquisition is authorized by an act of Congress. The Committee discussed the acquisition procedure.

Mr. Hubbard said that Nebraska does not appeal any request for placing land in trust. The reason given on an application for land in trust cannot be changed during the granting process. There are policy differences with the BIA for applications, such as locale, lawsuits, etc. There are no distinctions made for tribes that are Federally recognized as opposed to those tribes which are not recognized. The procedural amendments that were considered relative to the land in trust issue under the Clinton administration were dropped. A working group has been formed within the Department of Interior that is reviewing those issues now. Mr. Hubbard said his office has a realty department, soil conservation office, highway department, governmental service office, housing office, education office, and administrative office. There are 11 employees. He did not know how far the applications have gone from non-resident tribes since they are not processing them in his office. He does not get notice from the Muskogee office concerning land in trust applications.

Russell Bradley, Kickapoo Tribal Treasurer, stated that the fee to trust issue is of great importance to the tribes. He stated that he had formerly worked with the BIA on these issues. He stated that the Kickapoo Tribe have 105 children going to school on the reservation in Grades K-12 and 100 children going to school in Horton.

Emily Conklin, Kickapoo Tribal Vice-Chairperson, said that since 1988 the BIA has received ten applications from the Kickapoo Tribe. None have been accepted or rejected to date.

Gail DePuis, Executive Director, Kansas Office of Native American Affairs, gave an update on activities of the Office of Native-American Affairs and the Governors' Interstate Indian Council activities (Attachment 2). On November 5, the state celebrated National American Indian and Alaska Native Heritage Month with a ceremony in the Statehouse. She stated that the office is pursuing private and public funding sources to assist with education and other areas of interest. Unfortunately, the agency has lost its grant writer. She stated that their website is up and running and she is working on setting up a database on funds received by the tribes from various sources. She said that she specifically does not represent the four tribes in Kansas, but the office is available to assist the tribes in areas where they need help. The office is looking at coming under the umbrella of the Governor's office, and she will keep the Committee updated. She stated that Title 7 funds are available to schools with a qualifying number of Native American students. The office has requested that President Bush fund the Help America Vote Act.

Steve Alexander, Attorney General's Office, stated that he only has written three letters concerning land in trust applications, since he had recently began working in the office. He has had no response from the BIA. He noted that the State opposes most land in trust applications because the State is deprived of taxes and loses jurisdiction over land in trust. He briefly reviewed the application regulations. The application form given to the BIA is not provided to the State.

Don Pilcher, Sac and Fox Nation, asked about the total number of acres that are involved in three land in trust applications. Chair Oleen said the Committee would discuss this at their next meeting. She suggested that the tribes give the notice applications to the Governor's Office at the same time they give them to the BIA. This would assist in keeping lines of communication open.

Brad Hamilton, Jackson County Commissioner, officially welcomed the Committee to Jackson County. He presented information concerning land in trust in Jackson County (Attachment 3). The County's position is that they object to land being taken into trust because the County:

- Loses regulatory jurisdiction;
- Loses real property taxes; and
- Loses special assessments.

He stated that the County needs to protect its revenue streams. The county has mechanisms in place to remove land from the tax roles for economic development reasons, but they have had no applications in over 20 years to do this. There have been many contributions to schools, senior centers, etc. by tribes, but the local governments have no authority to allocate those resources to where they are most needed. Mr. Hamilton will provide county sales tax information to the Committee at a later time.

Kristi Fischer, Jackson County Deputy County Clerk, reviewed the land in trust maps provided by Mr. Hamilton. She explained that the Committee would be touring part of the property shown on the maps after noon recess (Attachment 3A). It was noted that the current Jackson County budget is \$9,300,000.

Lois Pelton, Jackson County Commissioner, said that Jackson County and tribal fire departments work together, but there are no cost savings because volunteers staff the County Fire Department. She said that the 118 miles of road that is maintained by the tribe is certainly a saving to the county. She said that all 911 calls go to the Jackson County Sheriff's Office. She said she feels something is not right with the process because some land in trust applications are processed in as little as 30 to 90 days, while others have been in the process for over 10 years.

Jackson County Sheriff Bruce Tomlinson testified that his department handles all county law enforcement. Tribal law enforcement officers are allowed to handle only issues with tribal members. He noted that emergency services vary within each county and local jurisdictions.

David Prager, Counsel for the Prairie Band Potawatomi Nation, discussed the Indian commerce clause. The tax issue is the real reason for objections to applications for land in trust. Most applications are in process from one to five years. He provided a copy of the Roberts case decision to the Committee (Attachment 4). Tribes see fee to trust as a way to continue their Indian heritage. Mr. Prager gave a copy of the Goodrich land to trust ruling to the Committee (Attachment 5). He said that 90 percent of the fee to trust applications are for agricultural land. He noted that last year the tribe gave the State \$1 million for a highway enhancement project, and \$200,000 for education. He noted that the tribe has civil jurisdiction on the reservation.

John Graw, Jackson County Commissioner, said he hoped that the tribe and the Jackson County Commission could continue to have good meetings and open communication. He expressed concern of land to trust where the land is contiguous with the reservation. He said that, if the tribe continues to buy land next to Highway 75 and uses it, that would create a lot of lost revenue to the county. He felt the Federal government gave the tribes the right to have gaming, but within the confines of the reservation. He strongly opposes building casinos on land in trust off the reservation without giving the county any tax dollars.

The Committee recessed one hour for lunch.

Matt All, Chief Counsel to the Governor, presented information concerning the lottery and gaming laws in Kansas. He said the legal issue is state-owned and operated lottery vs. IGRA-type lottery, referring to the Indian Gaming Regulatory Act. He noted that, in 1986, the State allowed state parimutuel and state licensed lottery. State owned refers to the operation, not the real estate. Absent a constitutional amendment, any proposals to expand gaming in Kansas must take great care to account for the requirement that it be state owned and operated according to Mr. All. He said there are no states that have state owned casinos. IGRA has control over Class I, II, and III gaming. To operate gaming under IGRA, the casino must be on "Indian lands." He concluded that both the state owned and the IGRA routes present significant legal hurdles.

Committee members were given a driving tour of some properties that are being held in trust on the Prairie Band Potawatomi Nation Reservation. They were shown the 85-acre tract known as the Goodrich property, new construction of duplexes and apartments, the tribal police department, and the Senior Center. They concluded the remainder of their meeting in the Senior Center.

Theresa Kiernan, Revisor of Statutes Office, reviewed bills from the 2002 Legislative Session relative to the tribal law enforcement issue (Attachment 6). SB 9 would have given tribal law enforcement officers additional powers.

Committee discussion was held.

Sam Grant, Assistant Police Chief of Prairie Band Potawatomi Nation Tribal Police, presented a letter from Chief of Police T. J. Scott endorsing SB 9 (Attachment 7).

Representative Hutchins reviewed the law enforcement issue as it affects the county and the tribe. She felt cooperation was better between the county and the tribe and was continuing to improve. One of her suggestions was to define the term "reservation" carefully.

Ed Dunn, Counselor to Jackson County Commissioners, concurred with Representative Hutchins' remarks. He hoped that this issue can be addressed again at the next Committee meeting with a bill that could be worked during the 2004 Legislative Session.

The Committee felt that a new bill would be appropriate, rather than reworking SB 9.

Lamar Shoemaker, Brown County Sheriff, said their inter-local agreement is a deputization process. Liability issues came to light, and he said he no longer deputizes municipal police. Representative Mason said he appreciated the good cooperative efforts that are being made to move this issue along. Ben Ehrhart, a concerned citizen, Mayetta, Kansas, voiced support for SB 9. He noted that campus police do not have a court, but tribal police do have a court system. He stated that the Tribal Council's membership changes quickly and that creates problems in getting things accomplished through to the end.

Representative Mason moved to approve the Minutes of the November 5 Committee meeting as presented. Representative Hutchins seconded the motion. The motion passed.

The meeting adjourned at 3:45 p.m.

Prepared by Judy Swanson
Edited by Russell Mills and Dennis Hodgins

Approved by Committee on:

December 15, 2003

(date)